

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

**ATTORNEY GENERAL**

for the calender years

1965 - 1966

and not withdraw, does *not* prevent him from withdrawing as a candidate whenever he sees fit to do so." (Emphasis supplied)

Cases from California, Montana, Wisconsin, Maryland and New Jersey are cited in support of this proposition.

The question then boils down to whether our consent provision in Maine amounts to a statutory prohibition against resignation. This in turn is a matter of interpreting legislative intent.

In the Nevada cases, the only legislative intent expressed was the provision requiring the filing of the consent form. However, our election laws, namely section 1474, provides:

"If a person nominated for an office . . . at a regular primary election dies, *withdraws* or becomes disqualified before the general election, the Governor shall issue a proclamation as provided in section 1473 . . ." (Emphasis supplied)

The other sections referred to outline the procedure for filling vacancies by the Governor.

We thus have a situation where on one hand the Legislature has required filing an unsworn consent not to withdraw and on the other hand has provided a procedure for filling a vacancy caused by a withdrawal. I am not concerned with whatever moral or ethical commitment may result from a filing of a consent but only with its legal effect. In view of the foregoing, I must conclude that a candidate is not prohibited from withdrawing after nomination regardless of what his reasons may be.

I feel I should point out in view of the public interest in this question that the only question that has been posed to us and the only one which I have considered is whether any prohibition exists against withdrawal. I have not been asked to rule on whether a person can simultaneously seek two offices. I will add that if a nominee withdraws as I have indicated is permissible, I can see no legal objection to his seeking another office in accordance with the provisions of the election laws relating to nomination by petition namely sections 491-494.

RICHARD J. DUBORD  
Attorney General

August 23, 1966  
Water Improvement Commission

Raeburn W. Macdonald, Chief Engineer

State's program of aid grants to municipalities.

*FACTS:*

Under existing federal law 30% of the cost of sewage treatment works may be borne by the federal government and under existing state law, the State of Maine may contribute a similar amount. There is at the present moment under amendments to P. L. 660-84th Congress an increase of 10% of the 30% or a total of 33% in net federal aid available if the project for which aid is requested is part of a regional planning program.

Included in legislation presently before Congress are provisions for making 40% federal aid available in cases of a project part of a regional program, and 50% federal aid available if the project is part of a river basin program.

*ISSUE:*

When the Legislature enacts a law which by reference authorizes the State to provide

financial aid in the same amount as that which the federal government may provide under federal law, does an amendment of the aid provision of the federal law automatically amend the State reference statute?

ANSWER:

No.

REASON:

The applicable State statute as set forth in 38 M.R.S.A. § 411 provides:

“The Commission is authorized to pay an amount equal to the total federal contribution under P. L. 660, 84th Congress to the expense of a municipal or quasi-municipal pollution abatement construction program which has received federal approval and federal funds for construction.”

Public Law 660-84th Congress originally provided for federal assistance of 30% of total construction cost of municipal sewage treatment programs or \$250,000, whichever is less. Congress in 1961 amended this provision by the enactment of P. L. 87-88th Congress which maintained the 30% aid provision but authorized the federal government to provide as much as \$600,000 toward sewage abatement construction works if said figure were less than 30% of total construction costs.

By the enactment of 38 M.R.S.A. § 411 quoted above in 1964, the Legislature made clear that the Commission was authorized to appropriate funds equal to the total contribution which the federal government was authorized to provide. 38 M.R.S.A. § 411 refers only to the aid provisions of the federal law as those provisions existed at the time of their adoption by the Legislature however, to wit: December 31, 1964. The Legislature did not make clear that the State of Maine, acting through the Commission, would be authorized to meet the terms of future amendments to aid provisions which Congress might enact relative to P. L. 660-84th Congress.

In a leading treatise dealing with the subject of statutory construction it is stated:

“A statute of specific reference incorporates the provisions referred to from the statute as of the time of adoption without subsequent amendments, unless the Legislature has expressly or by strong implication shown its intention to incorporate subsequent amendments with the statute. In the absence of such intention subsequent amendment of the referred statute will have no effect on the reference statute. . . .” Sutherland, *Statutory Construction*, 3rd Ed. (Vol. 2) § 5208.

In October of 1965 Congress enacted P. L. 89-234 which provided for an additional 10% of the amount of grants which Congress might provide, or 33% in federal aid. This Congressional amendment took place after the enactment of the state law (38 M.R.S.A. § 411) and does not become a part of the state reference statute.

To construe section 411 of Title 38 of our statutes as meaning that the Legislature determined that the state would be authorized to provide aid in any amount which Congress might decide upon at some future date, would be to allow the state legislature to delegate its lawmaking duties to Congress. This may not be done.

Should the aid provisions of the federal law (P. L. 660-84th Congress) be revised, the Legislature should consider the wisdom of revising the applicable state reference statute (38 M.R.S.A. § 411) so as to incorporate the amended federal provisions.

PHILLIP M. KILMISTER  
Assistant Attorney General